IN RE: PETITION FOR SPECIAL HEARING * NE/S Beachwood Road 1,000 ft. NW of Lynhurst Road 4116 Beachwood Road

ZONING COMMISSIONER * OF BALTIMORE COUNTY 15th Election District 7th Councilmanic District

James W. Weimer Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property located at 4116 Beachwood Road in the Beachwood subdivision of Baltimore County. The Petition was filed by the property owner, James W. Weimer. The Petitioner seeks approval of a designation of the property for the nonconforming use of 2 dwellings on this one .22 acre lot with a 35 ft. setback between them. The relief is more described on Petitioner's Exhibit No. 2, the plat to accompany the Petition for Special Hearing.

* CASE No. 93-374-SPH

As noted above, the property is .22 acres in size and is zoned D.R.5.5. This is a waterfront property which abuts Back River. The property is improved by three structures thereon. In the center of the lot is an existing 21 ft. x 34 ft. house which is occupied by Mr. Weimer. To the front (water side) of the lot is a small existing screened house which is 12 ft. x 14 ft. To the rear (roadside) is a small 12 ft. x 24 ft. structure which is identified on the site plan as an existing bungalow.

The zoning history of the property is also unique. Within case No. 92-187-A, the Petitioner came before Deputy Zoning Commissioner Timothy M. Kotroco, requesting a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure to be located in the front yard in lieu of the required rear yard. The subject

The Petitioner's proof fails on both counts. There is no substantial

testimony and evidence before me that the two dwelling character of this lot

existed prior to January 2, 1945. Moreover, based on the Petitioner's incon-

sistent testimony, as well as that offered by Ms. Rakowski, I am not persuad-

ed that the use has continued uninterruptedly since that time. Therefore,

the Petition for Special Hearing must be denied. It is to be noted that I

make this judgment based on the narrow issue and facts presented. It ap-

cale. However, that is not the issue before me. I must, and have, decided

this case based on the issue presented and the testimony and evidence elicit-

hearing on this Petition held, and for the reasons given above, the Petition

Hearing, approval of a nonconforming use of 2 dwellings on this one .22 acre

lot with a 35 ft. setback between them, be and is hereby DENIED.

Pursuant to the advertisement, posting of the property, and public

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County

day of September, 1993 that, pursuant to the Petition for Special

ed about that issue at the public hearings

for Special Hearing should be denied.

the apartment use of the bungalow is not detrimental to the lo-

structure involved in that case was the screenhouse, which is located near After the requisite public hearing, and upon consideration of the testimony and evidence presented, Deputy Commissioner Kotroco granted the variance. His decision was appealed to the County Board of Appeals which, likewise, granted the variance. The Board's decision was subsequently appealed to the Circuit Court for Baltimore County and was affirmed by Order of Judge Thomas J. Bollinger on August 11, 1993. Apparently, a further appeal has been taken from the Court's Order to the Court of Special Appeals of Maryland. That appeal is, at this time, pending.

The instant case is unrelated to this prior litigation. Instead, it deals with the structure located next to the roadway identified as the existing bungalow. Apparently, that house is now rented by Mr. Weimer. In that the D.R.5.5 zoning designation does not allow two dwellings on the same lot, the Petitioner seeks permission to continue the two dwelling use of the property pursuant to the Petition for Special Hearing as a nonconforming use.

The matter was originally scheduled for public hearing before this Zoning Commissioner on June 3, 1993. At that time, Mr. Weimer appeared. There were no Protestants. During my questioning of the Petitioner at that time, he indicated that he had acquired the property with his wife in approximately 1964. Since then, he indicated that the bungalow was "occasionally" rented and that there had been tenants "very seldomly". In that the Petitioner did not appear to appreciate the nature of the proof necessary to consider the Petition, I continued the public hearing. Further, an adjoining property owner, Rhonda Rakowski, has been actively contesting the case presently before the Court of Special Appeals since its inception before the Deputy Zoning Commissioner. In that she was not present at the first public hearing, the matter was also continued to allow her to participate.

Mr. Weimer and Ms. Rakowski appeared at the subsequent hearing date held for this case on September 10, 1993. At that time, Mr. Weimer testified as to the history of the property. As before, he indicated that he and his wife purchased the property and moved into same in the mid 1960s. Moreover, on September 10, 1993, he stated that the bungalow house had been continuously rented since 1964. Unfortunately, however, he was unable to present any personal testimony about the use of the property prior to the date of his acquisition. That is, he had no personal knowledge of the property until he and his wife purchased same. He did, however, provided documentation from the State of Maryland Department of Assessments. This documentation, which is frankly difficult to decipher, allegedly shows that two houses existed on the property since June 12, 1945. The records are silent, however, as to whether the houses have been continuously utilized and rented as two dwellings since that time.

Additionally, Ms. Rakowski testified at the September hearing. She indicated that she was born in this neighborhood in 1955 and has been familiar with the property since early childhood. She disputed Mr. Weimer's testimony in September and concurred with his remarks made at the first hearing date that the bungalow has been rented only occasionally. She indicated that there were long gaps of time when the bungalow was not occupied. Moreover, she is distressed that Mr. Weimer may be able to utilize both structures as dwellings when her parents were told some years ago that her property could not be so utilized.

In addition to the testimony and evidence offered at the public hearing, I have also reviewed the case file from case No. 92-87-A. I believe it significant to note that on the site plan submitted in that case, the structure now identified as the bungalow was identified as a garage.

1/30/93

CRITICAL AREA ZONING DESCRIPTION

As indicated above, the matter comes before me as a Petition for Spe-

cial Hearing seeking the designation of a two dwelling use as nonconform-

ing. A nonconforming use is identified in Section 101 of the B.C.Z.R.

Therein the term is defined as "a legal use that does not conform to a use

regulation for the zone in which it is located or to a special regulation

applicable to such a use." Applying that definition to the instant case, it

is to be noted that D.R.5.5 zone does not permit two dwellings on the same

have existed prior to the adoption of the zoning classification which prohib-

its same. That is, only if the use of the two dwellings as apartments pre-

dates the zoning of the property prohibiting such a use, may the use contin-

ue. In other words, the Petitioner seeks to "grandfather" this use. More-

over, Section 104 of the B.C.Z.R. governs nonconforming uses and their appli-

doned or discontinued for a period more than one year or more. Further,

the zoning maps disclose that the site has been zoned D.R. for many years.

Previously, it was zoned M.L. Further, a review of the original zoning

regulations adopted by Baltimore County, effective January 2, 1945, disclos-

es that multi-dwellings were not permitted on any M.L. lot less than 10,000

sq. ft. The total area of this lot is 9,750 sq. ft. Therefore, in order

for the nonconforming use to be permitted in this case, the Petitioner must

adduce testimony and evidence that the site has been nonconforming since

prior to January 2, 1945 and that said use has continued uninterruptedly

In reviewing the history of the zoning designation of this property,

there can be no change in the character of the nonconforming use.

Thus, in order for the two dwellings to be permitted, they must

Therein, it is provided that a nonconforming use cannot be aban-

Beginning at a point on the North side of Beechwood Road, which is 50' wide at the distance of approximately 1000' west of the centerline of Lynhurst Road which is a 50' wide right-of-way, being Lot #17 in the subdivision as recorded in Baltimore County Plat Book #10, folio #123, containing 9,750 sq. ft. Also known as 4116 Beechwood Road and located 93-374-5PH in the 15th Election District.

Baltimore County Government Zoning Commissioner Office of Planning and Zoning

Suite 113 Courthouse **400** Washington Avenue Towson, MD 21204

RECEIVED FOR FILING

(410) 887-4386

September 30, 1993

Mr. James W. Weimer 4116 Beachwood Road Baltimore, Maryland 21222

> RE: Case No. 93-374-SPH Petition for Special Hearing Property: 4116 Beachwood Road

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been denied, in accordance with the attached Order.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

cc: Ms. Rondalyn Rakowski, 4118 Beachwood Road, Baltimore, Md. 21222

Petition for Special Hearing for the property located at 4116 BEACHWOOD RO.

This Puttion shall be filed with the Office of Zening Administration & Development Management.

The undereigned, legal owner(a) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

The non-conforming use of 2 dwellings on this one .22 acre lot with a 35 ft. setback between them.

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	BACTIMORE MP 21222
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	JAMES W WEIMER
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LES:mmn

7- 374-SPH

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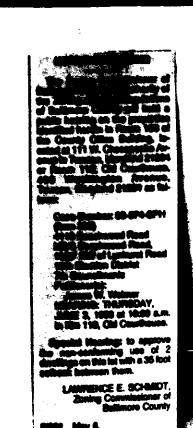
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Pocial Hearing

Tomes W. Weinser

Zoning Commissioner for

Baltimore County



CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of ___ successive weeks, the first publication appearing on 514.1993

PGG [P]

93-374
Account: R-001-6150 SPH

Number Item 385

Takenin by: fiff

Balt'more Councy
Zoning Administration &
Development Management 111 West Chesapeake Avenue

Date 4-23-93

Jomes W. Weimer 4116 Beach wood Rd

#030 - Special Hearing __ \$50.00

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Cashler Validation

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

Arnold Jablon, Director Zoning Administration and Development Management

DATE: May 11, 1993

FROM: Pat Keller, Deputy Director Office of Planning and Zoning

Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s): Item Nos. 364, 366 and 385.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

PK/JL: lw

364.ZAC/ZAC1

Baltimore County Government Office of Zoning Administration and Development Management

111 West Chesapeake Avenue Towson, MD 21204

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

1) Posting fees will be accessed and paid to this office at the time of filing.

2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper. NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

For newspaper advertising: Item No.: 385

PLEASE FORWARD ADVERTISING BILL TO:

Zoning Advisory Committee

Comments for 05/10/93 Meeting

sprinklered.

No Comments

No Comments

No Comments

No Comments

No Comments

No Comments

Captain Jerry Pfeifer

Fire Department

Item 374

Item 375

Item 376

Item 377

Item 378

Item 382

Item 383

Itom 384

PHONE NUMBER: 477-1485

(Revised 04/09/93)

May 3, 1993

Townhouses for which the initial building

permit is applied for after 07/01/92 shall be

BETIMORE COUNTY, MARS AND 5/4/93

INTER-OFFICE CORRESPONDENCE

4299-93

Baltimore County Government Office of Zoning Administration and Development Management

(410) 887-3353

MPRIL 30, 1993

111 West Chesapeake Avenue

Towson, MD 21204

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public bearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesepseke Avenue in Townon, Haryland 21204

Room 118, Old Courthouse, 400 Washington avenue, Towson, Haryland 21204 as follows:

CASE NUMBER: 93-374-SPH (Item 385) 4116 Beachwood Road ME/S Beachwood Road, 1000' MH of Lynhurst Road 15th Election District - 7th Councilmonic Petitioner(s): James W. Weimer HEARING: THURSDAY, JUNE 3, 1993 at 10:00 a.m. in Rm. 118, Old Courthouse.

approve the non-conforming use of 2 dwellings on this lot with a 35 foot setheck

NOTES: (1) ZONING SIGN & POST MOST BE RETURNED TO NO. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE. (2) HEARTHUS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMONATIONS PLEASE CALL 887-3353.

Baltimore County Government

Office of Zoning Administration

and Development Management

(410) 887-3353

May 24, 1993

Mr. James W. Weimer 4116 Beachwood Road Baltimore, MD 21222

> RE: Case No. 93-374-SPH, Item No. 385 Petitioner: James W. Weimer Petition for Special Hearing

111 West Chesapeake Avenue

Towson, MD 21204

The Zoning Plant Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on April 23, 1993, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

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Baltimore County Government Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse 400 Washington Avenue Towson, MD 21204

Mr. James W. Weimer

4116 Beachwood Road

August 19, 1993

(410) 887-4386

Baltimore, Maryland 21222 RE: Petition for Special Hearing

Case No. 93-374-SPH Property: 4116 Beachwood Road

As you recall, a Petition for Special Hearing was filed by you in reference to the above property. This Petition requested that I approve the nonconforming use of two dwellings on the subject property which is zoned D.R.5.5. The matter was scheduled for public hearing on June 3, 1993 at 10:00 A.M.

At the public hearing held on that date, an agreement was reached that the case would be continued. Specifically, you indicated that you did not have sufficient proof available to you at that time to justify the granting of the Petition for Special Hearing. Further, since an interested neighbor, Ms. Rondalyn Rakowski, was not present, a continuance of the hearing was granted to allow her the opportunity to participate. Since the date of the hearing, I have not heard anything from you, regarding this case, but assume that you wish to go forward.

Thus, I have scheduled this matter for rehearing ones. The hearing will be held la At that time, you should be prepared to present any testimony and evidence which you deem appropriate regarding this Petition. Further, by copy of this letter to Ms. Rakowski, I am inviting her to attend the hearing on that date if she wishes to so participate.

Kindly contact me should you have any questions regarding this matter.

cc: Ms. Rondalyn Rakowski, 4118 Beachwood Road, Balto. Md. 21222 cc: Gwen Stephens, Docket Clerk, Zoning Administration & Development Mge. BALTIMORE COUNTY, MARYLAND

Mr. Arnold E. Jablon, Director DATE: May 27, 1993 Office of Zoning Administration and Development Management

J. James Dieter

Chesapeake Bay Critical Area Findings

SUBJECT: Petition for Zoning Variance - Item 385 Weimer Property

INTER-OFFICE CORRESPONDENCE

The subject property is located at 4116 Beachwood Road. The site is within the Chesapeake Bay Critical Area and is classified as a Limited

Development Area (LDA). APPLICANT'S NAME Mr. James W. Weimer

APPLICANT PROPOSAL

SITE LOCATION

The applicant has requested a Special Hearing to approve the "non-conforming use of 2 dwellings on this one .22 acre lot with a 35 foot setback between them".

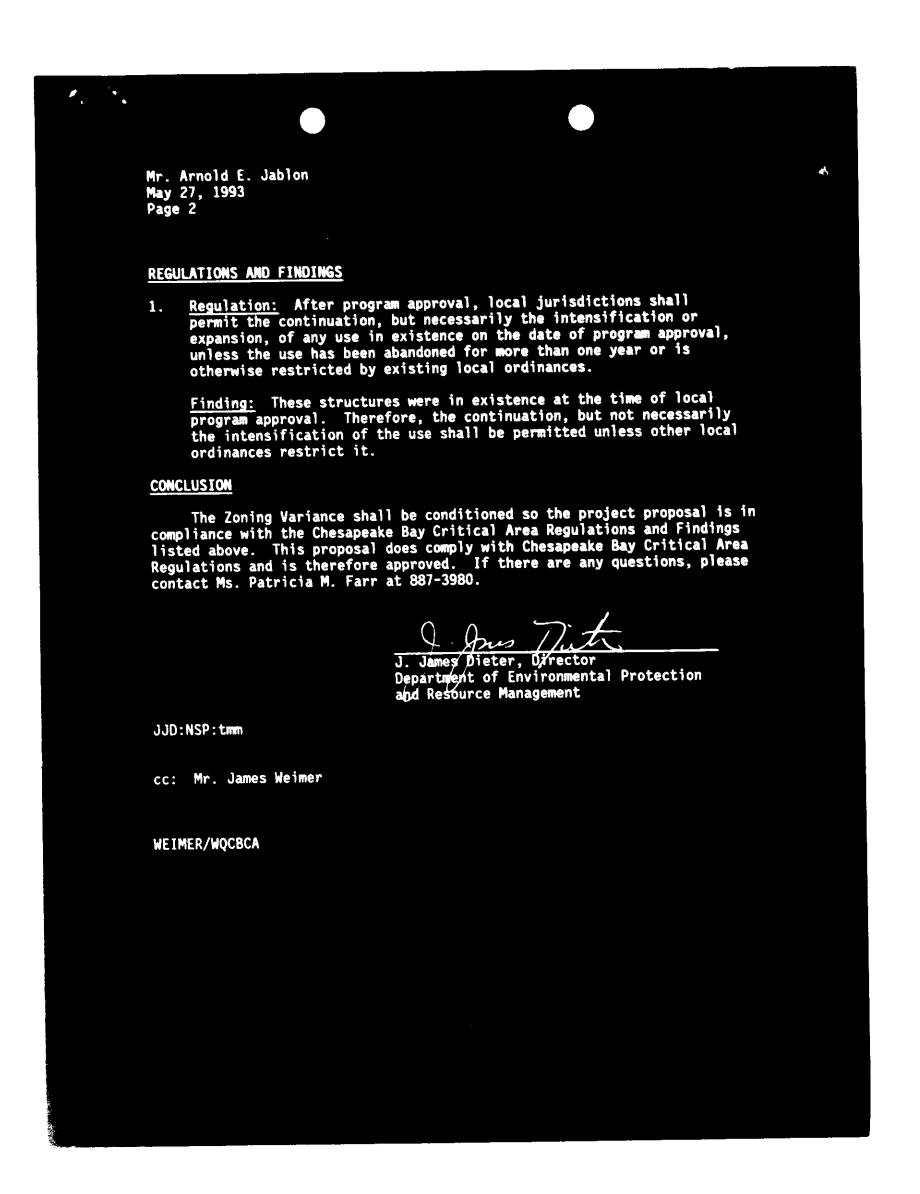
GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

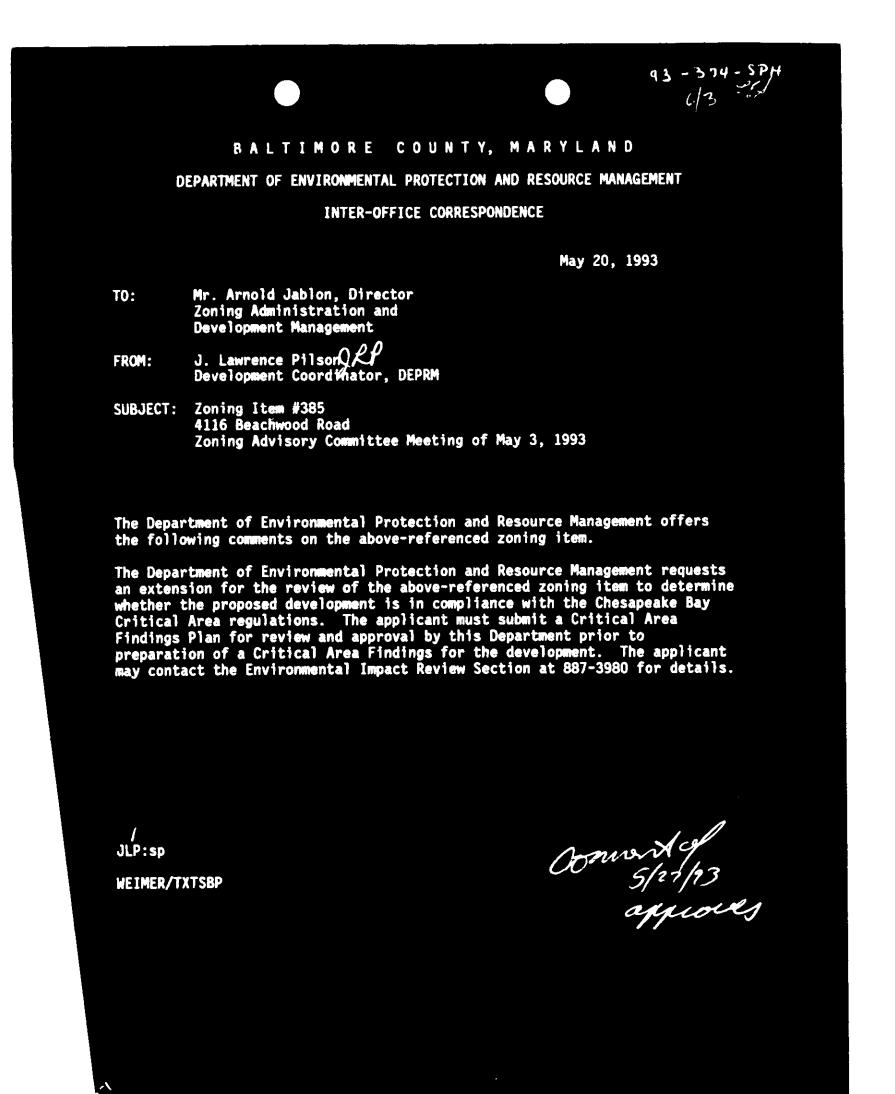
In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

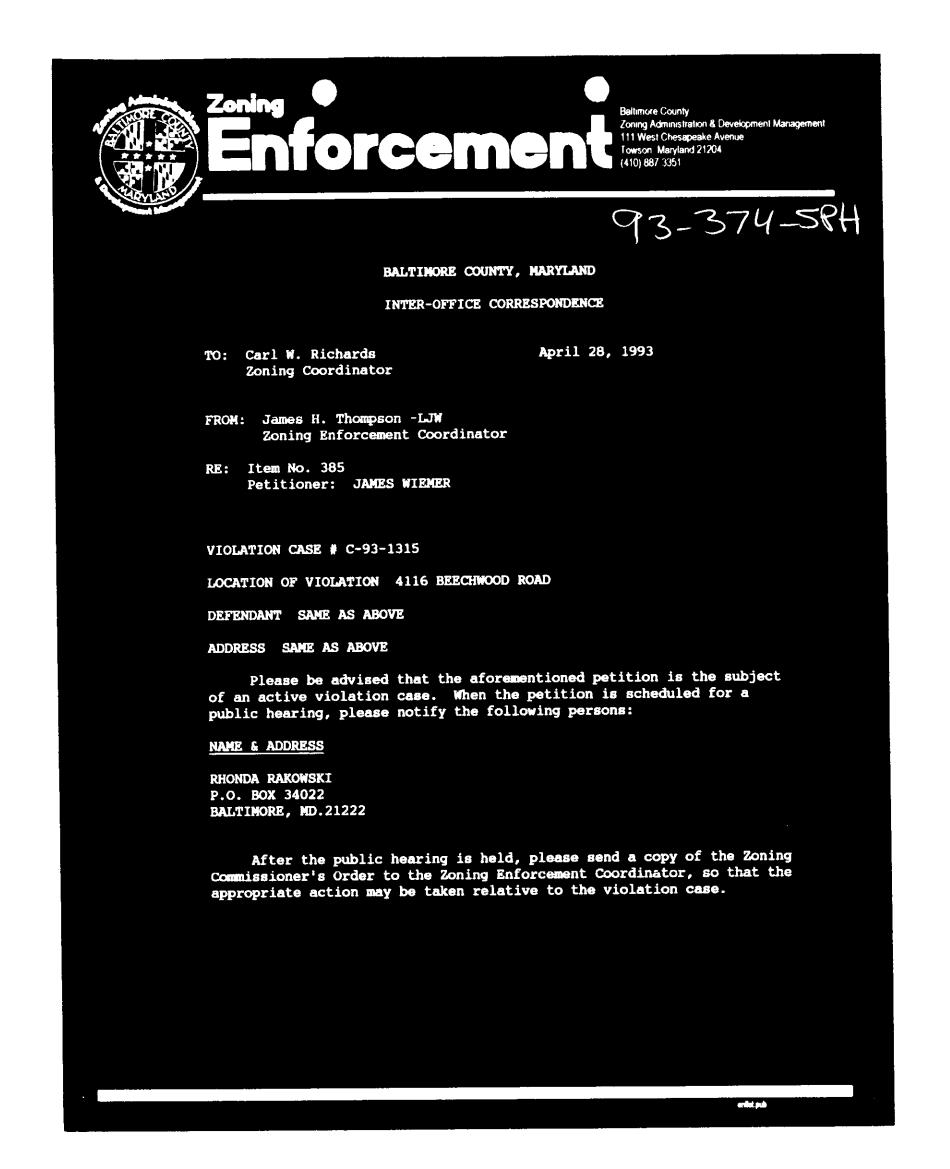
- 1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
- 2. Conserve fish, wildlife and plant habitat; and
- 3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts COMAR 14.15.10.01.0>.

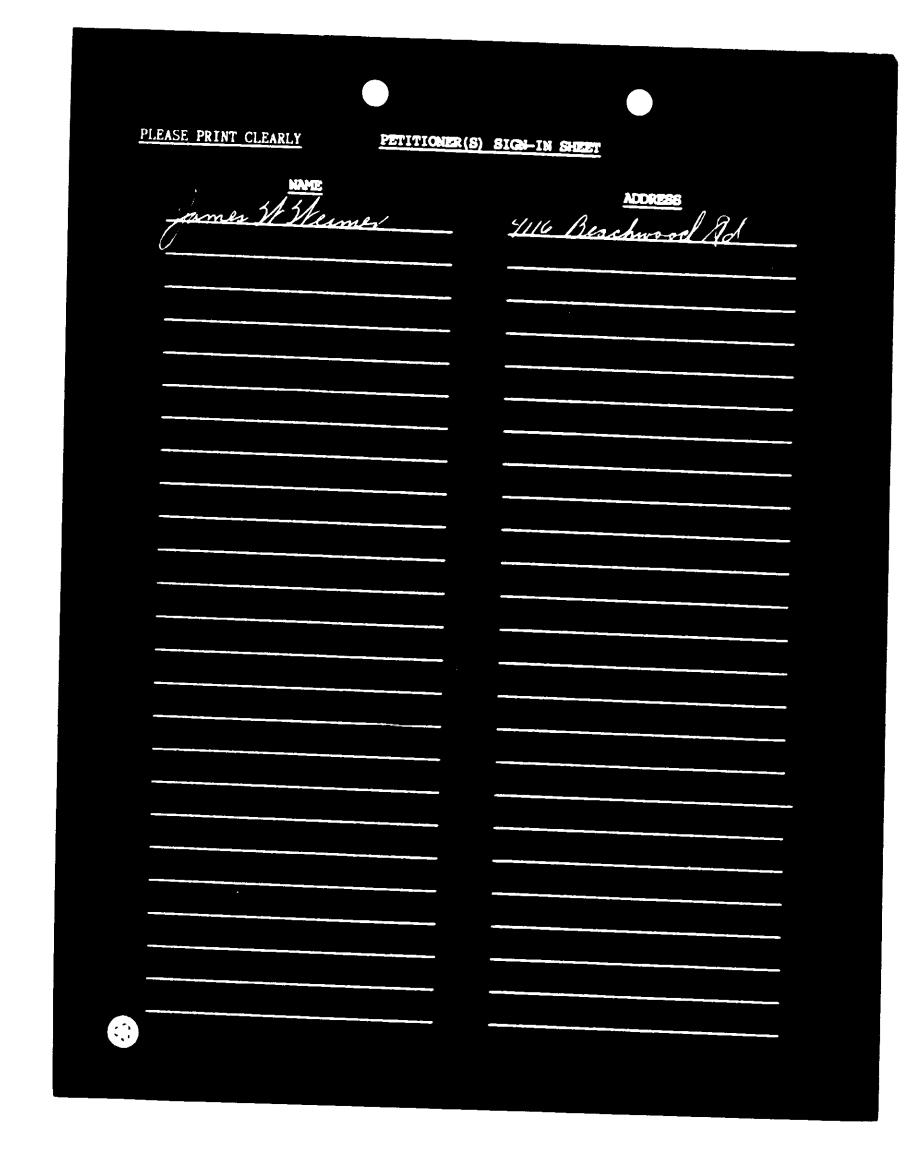


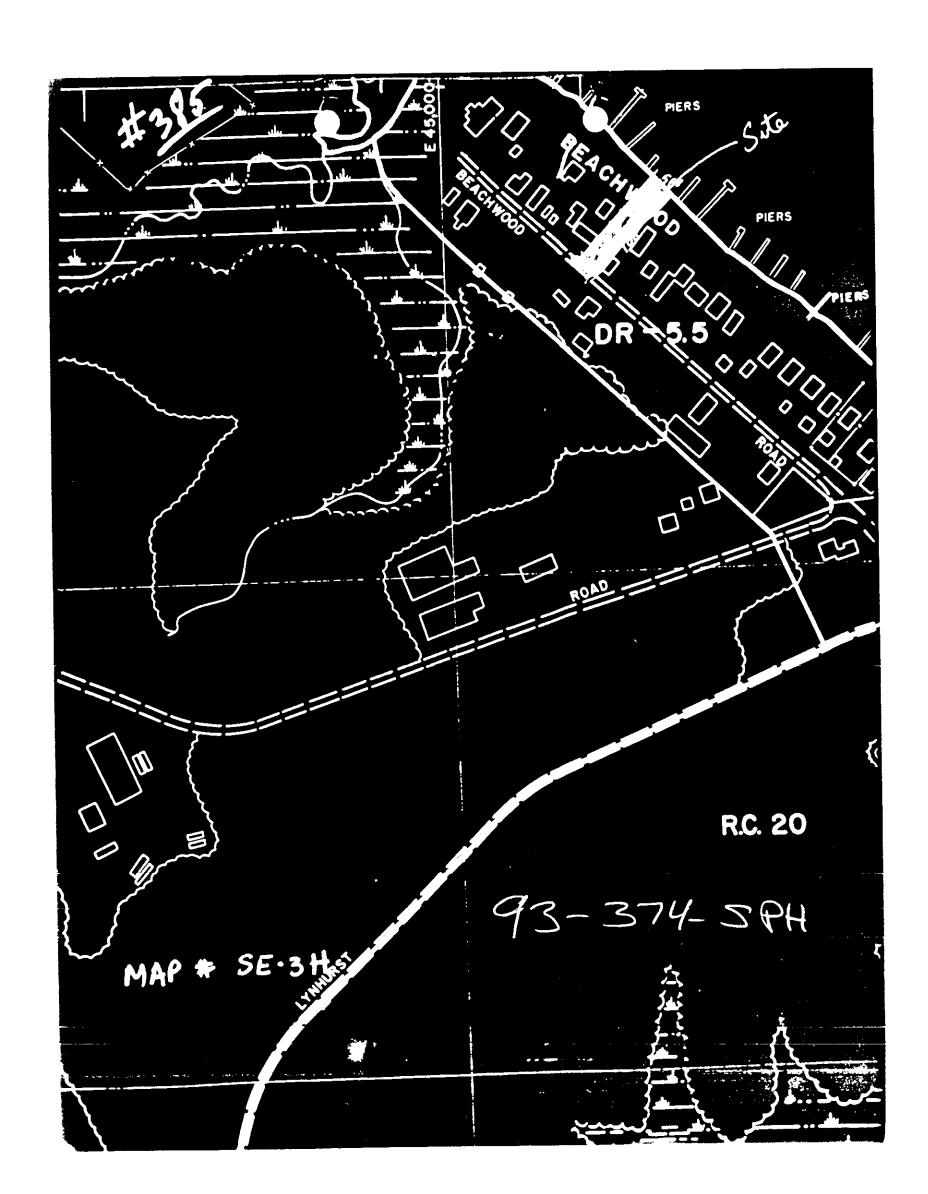
CPS-008

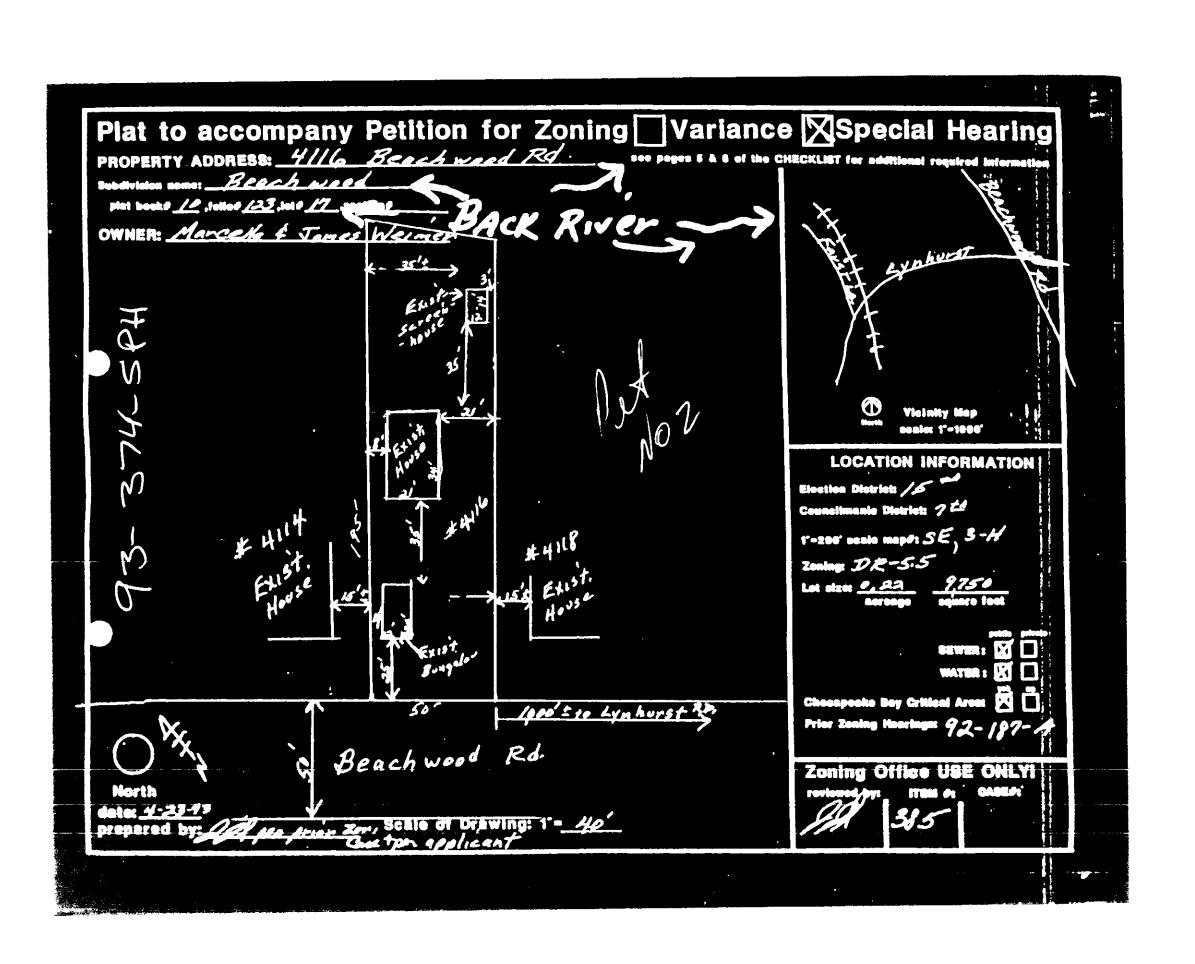


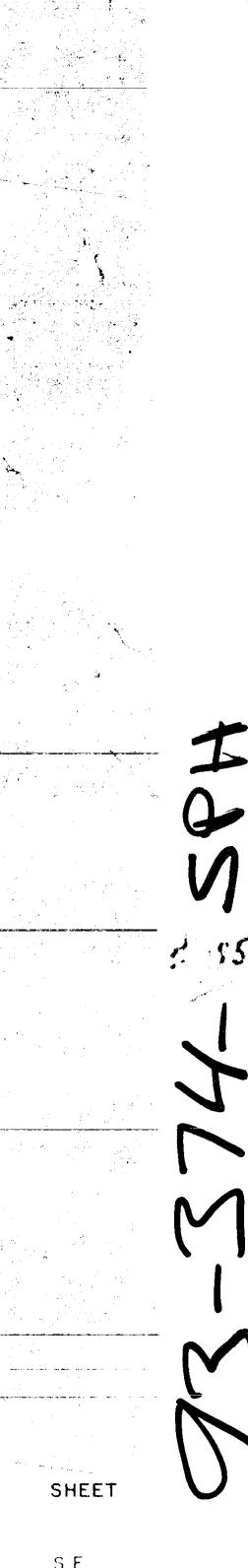












NORTH POINT

PHOTOGRAPHY

JANUARY

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC. MARTINSBURG, W.V. 25401